

Case Number 2:14-CV-01166-JMA

Dear Judge Azrack,

I am attaching as per your order, a copy of the December 10, 2013 Bankruptcy Court Hearing Transcript.

Lynn Schneider

CC: Gary F. Herbert
David Blansky

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1 UNITED STATES BANKRUPTCY COURT
2 EASTERN DISTRICT OF NEW YORK
3 Case No. 04-85727
4 - - - - - x
5 In the Matter of:
6
7 LYNN CAROL SCHNEIDER,
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9 Debtor.
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11 - - - - - x
12 U.S. Bankruptcy Court
13 290 Federal Plaza
14 Central Islip, New York 11722
15
16 December 10, 2013
17 10:21 a.m.
18
19 B E F O R E:
20 JUDGE DOROTHY EISENBERG
21
22
23
24
25

A P P E A R A N C E S:

BY: ELIZABETH MASON, Secured Creditor

Elizabeth A. Mason, LLP

200 Park Avenue, 17th Floor, New York, NY 10166

212-319-9092

BY: LYNN CAROL SCHNEIDER, Debtor

BY: DAVID BLANSKY, Trustee

Lamonica, Herbst and Maniscalco, LLP

3305 Jerusalem Avenue, Wantagh, NY 11793

516-826-6500 x 207

BY: MARC A. PERGAMENT, Long Island Forum for Technology

Weinberg, Gross And Pergament LLP

400 Garden City Plaza, Garden City, New York 11530

516-877-2424

BY: ALFRED DIMINO, Trial Attorney

Office of United States Trustee

560 Federal Plaza, Central Islip, New York 11722

631-715-7800 x 226

Transcribed by: Jodi Kanestrin

1 Hearing re:

2

3 Matter: Motion to Compromise Controversy Pursuant to Federal
4 Rule of Bankruptcy Procedure 9019(a), Seeking Approval of
5 Stipulation of Settlement By and Between R. Kenneth Barnard, as
6 Chapter 7 Trustee, the Long Island Forum for Technology and
7 Richard Cordani by David A. Blansky on behalf of R. Kenneth
8 Barnard. (Entered: 11/08/2013) [94]

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P R O C E E D I N G S

[10:21:38]

THE COURT: This is the matter of Lynn Carol Schneider.

MS. SCHNEIDER: I'm Lynn Carl Schneider.

THE COURT: All right. All right. This is a Motion to Compromise.

I'll hear the appearances. Identify yourselves.

MISS MASON: Elizabeth Mason. I am an attorney appearing pro se as the Estate's largest secured creditor and also as the Estate's, as one of the Estate's administrative creditors pursuant to Your Honor's Order where I was appointed as special, Counsel to the Trustee.

THE COURT: All right. Thank you.

And you are?

MS. SCHNEIDER: Lynn Schneider. I'm the Debtor.

THE COURT: All right.

MR. BLANSKY: Good morning, Your Honor. David Blansky, Lamonica, Herbst and Maniscalco appearing on behalf of R. Kenneth Barnard.

And also present, Mr. Barnard is present along with my partner, Mr. Herbst.

THE COURT: All right. Anyone else?

MR. PERGAMENT: Good morning. I'm Marc Pergament, Weinberg, Gross and Pergament, Your Honor, Counsel to Long

1 Island Federation, Long Island Forum for Technology.

2 Also present, Your Honor, is the C.E.O. of the
3 Not-for-Profit corporation and we're here in support of the
4 Trustee's Motion seeking Your Honor's approval of the
5 settlement.

6 THE COURT: All right.

7 And I see the U.S. Trustee is represented by Mr.
8 DiMino.

9 MR. DiMINO: Good morning, Judge.

10 Alfred DiMino from the Office of the United States
11 Trustee.

12 THE COURT: All right. All right.

13 This is your Motion.

14 MR. BLANSKY: Yes, Your Honor. Your Honor, probably,
15 little did you imagine five or six years ago that you would
16 find us back before Your Honor in another Motion seeking Court
17 approval.

18 As the Court may recall, approximately five or six
19 years ago the Trustee proposed a settlement of a different
20 magnitude, \$150,000, which was opposed at the time, not
21 supported by the U.S. Trustee's office and ultimately denied by
22 the Court.

23 At the time this Court had a number of concerns one of
24 which was ultimately what might the, how might the Debtor
25 benefit from it and, two, what would be down side to the Estate

1 in terms of cost, expense and delay if the matter were to be
2 pursued further.

3 If we go back a little bit further in time, the
4 genesis of this case is that this was a case that was re-opened
5 to allow the Trustee to administer this discrimination claim.
6 That was a claim that had not been disclosed initially but was
7 brought to the Court, the attention of Mr. Barnard at a later
8 date and the case was re-opened for that purpose.

9 The purpose of this hearing today is not to make light
10 on what the Debtor experienced and what she went through. The
11 point of this hearing is not to criticize the diligence of Ms.
12 Mason in pursuing the underlying award.

13 The issues we have to deal with in the context of this
14 hearing are whether Mr. Barnard is properly exercising his
15 business judgement in putting this before the Court and how
16 might benefit creditors of the Estate.

17 Here we have a number of tensions that work. One of
18 them we have to consider the integrity of the bankruptcy system
19 that depends on full and honest disclosures of Debtors.

20 At the same time we have to be sensitive to the fact
21 that we don't want wrongdoers to get windfalls in circumstances
22 like this because it hurts creditors.

23 So we have these tensions at issue.

24 Today before the Court is a settlement that is twice
25 the amount that the Court considered five or six years ago.

1 Proposed settlement structure for a \$75,000 payment now and
2 quarterly payments of roughly \$28,000.

3 In the event of non-payment, the settlement provides
4 for Judgement in the principal sum of the award that was made
5 in 2007 together with interest from April of 2007 at nine
6 percent. It is a serious default remedy.

7 And here the questions become how will it benefit
8 creditors of the Estate and this is where things get a little
9 dicey. What we have before you is objections by the Debtor who
10 failed to disclose the claim and the Trustee's Special Counsel
11 who also indicates that she's Administrative Creditor under her
12 retention and a creditor by virtue of her status as
13 pre-Petition employment Counsel to Ms. Schneider.

14 None of the unsecured creditors have filed objections
15 to the Motion.

16 And there's unusual incidents in which Special Counsel
17 to the Trustee has decided to superimpose her judgement or
18 assessment of a settlement over that of the client, Mr.
19 Barnard. In that regard, this is an exceptional case because
20 typically it's Mr. Barnard in his capacity as fiduciary that
21 makes a determination, puts it before the Court for approval.
22 It's usually not subject to the approval of his Special Counsel
23 that had been retained to follow those directives and that's
24 one of the frustrations here.

25 But more significantly, we think that we've come

1 before the Court with an award of a very different magnitude
2 that takes into account the, the likelihood of success on the
3 merits, the costs to be incurred among other factors that you
4 typically see in these cases.

5 Here we're surprised to see in the opposition papers
6 that the estimated amount of Ms. Mason's Administrative Claim
7 has reached \$70,000. She was retained, I believe, in April of
8 2009 and I know that we had reached the prospective settlement
9 number early in this year and went to sort of a pens down
10 status. So I don't know what, what has been incurred in the
11 more recent months. We've never seen a bill or an invoice but
12 that's not for today.

13 Ultimately the Court's concern for today is what might
14 be recovered, how might it be disbursed and at the end of the
15 day what might the Debtor see in the event of surplus.

16 Here I think the settlement is contemplated to provide
17 for funds to the Debtor notwithstanding that there's case law
18 that says that the non-disclosure, partial participation and
19 recovery. This is a Court of equity and I think even the lift,
20 and Mr. Granovi (phonetic) acknowledged that under the facts
21 and circumstances, a settlement should contemplate some benefit
22 to the Debtor under these circumstances even if there might be
23 a scenario under the cases that says she should not
24 participate.

25 At the end of the day the Court will determine what

1 fees will be appropriate to Miss Mason, to Trustee's General
2 Counsel, even Trustee's commissions to see whether they're
3 appropriate and give the entire picture on what the Debtor may
4 be entitled to receive under the facts and circumstances.

5 The single largest claim in the case is, of course,
6 that of Miss Mason. She's filed a claim arising from the
7 charging lien under the Judiciary Law. Under her pre-Petition
8 retainer, that sum is measured by what is actually recovered by
9 settlement or Judgement.

10 To the extent the Court approves the settlement,
11 that's going to be measured by a third plus her expenses. So
12 if the Court does not then reach, I guess this will continue to
13 prosecute this and whatever comes out at the end of the day
14 will, in terms of the amount of the administrative claim,
15 (inaudible) the number, but, of course, that is going to be
16 subject to your approval as to the value to the Estate, what
17 new work was done, how much work was done after a demarcation
18 line between wherein a settlement posture versus a, the
19 litigation posture. And, of course, what is the continued
20 expense of the Estate to proceed.

21 I understand from Miss Mason's papers that a briefing
22 deadline for the Estate is arriving, I believe she thought it
23 was approximately the 25th. I think by my calculations it may
24 be the 16th. But it is a near term date.

25 I imagine there would then be a reply and then

1 argument before the Second Department at some point next year.
2 And then, I guess, a determination thereafter at some point.

3 Here we have a case that, you know, it's the 2004 case
4 and we're still here. I think we've been presented with an
5 opportunity and a double the magnitude that was before the
6 Court before that was one that the Court could not, the Trustee
7 could not lightly disregard and not bring to the Court.

8 We have a relatively small unsecured creditor body.
9 That will certainly benefit them. And depending on the outcome
10 of the proof of the settlement and how the Court perceives the
11 professional fees, there should be money here leftover for the
12 benefit of the Debtor.

13 And so for these reasons we think that we do meet the
14 test for the approval of the settlement and that the Trustee
15 has appropriately exercised in his business judgement under the
16 circumstances. They're not easy ones but I think they're
17 appropriate ones.

18 THE COURT: Which, which creditors remain?

19 MR. BLANSKY: Your Honor, I believe it's an assortment
20 of small unsecured creditors. We have --

21 THE COURT: Other, other than Miss Mason.

22 MR. BLANSKY: Right. We have -- Well, we have G.E.
23 Money which is a small Claimant. We have a Discover Bank,
24 probably the single largest unsecured for \$18,000. We have
25 Capital One for a small sum of money. The single largest claim

1 seems to be a credit card and then two smaller credit cards.
2 The rest would -- The rest on the filed docket would have been
3 the administrative claims at the time that she had proposed the
4 Chapter 13.

5 So it's roughly \$40,000 of unsecured debt.

6 THE COURT: Okay. That's what I wanted to know.
7 Approximately \$40,000.

8 MR. BLANSKY: \$40,000 to \$42,000 but I believe one of
9 the claims is actually an amendment to an earlier claim for
10 \$1,500 and once addressed it would change the claim some --

11 THE COURT: Okay.

12 MR. BLANSKY: -- but you're talking about the \$40,000
13 of true unsecured debt.

14 THE COURT: All right. Is that your presentation,
15 Sir?

16 MR. BLANSKY: Yes, Your Honor.

17 THE COURT: All right. Anyone else wish to be heard?

18 MISS MASON: Your Honor --

19 THE COURT: Yes.

20 MISS MASON: -- I would like to be heard.

21 THE COURT: Yes.

22 MISS MASON: Thank you.

23 I'm appearing as pro se attorney with the largest
24 secured claim of the Estate.

25 Presently my secured claim is valued at \$234,000. I

1 also have an administrative claim that is currently valued at
2 \$70,000. Together that's more than \$300,000 in legal fees.

3 I should add, Your Honor, that I have been
4 representing Ms. Schneider in this case or I should be handling
5 this case the last thirteen years of my life and I have
6 received not one penny for that representation.

7 My compensation is going to be entirely dependent upon
8 the success of my enforcing a damage award that is now worth
9 approximately \$700,000.

10 THE COURT: How do you arrive at that because I have
11 looked at the Trustee's figures and he didn't come up to that
12 number at all.

13 MISS MASON: That's your -- That's correct. And
14 that's one of the main reasons of many why we oppose the
15 Trustee's --

16 THE COURT: Well, tell me how you arrive at your
17 number.

18 MISS MASON: My Exhibit A to my papers sets forth the
19 itemization by which I arrived at that figure.

20 THE COURT: Well, what, what happens if you proceed
21 and the Court goes the other way and says that there should not
22 be any award?

23 MISS MASON: That's, that's a good question, Your
24 Honor and I, I feel I, I have personal knowledge that can
25 answer that question.

1 There is two issues here. The first issue is that the
2 State Appellate Court has already ruled in our favor that the
3 Trustee has standing to file this claim and collect this claim.
4 That is no longer an issue that is on the table.

5 THE COURT: Is this an appeal?

6 MISS MASON: There is no appeal of that. There was no
7 appeal. The decision was rendered in 2012. It's my Exhibit D.
8 and that decision expressly states that the Trustee, pursuant
9 to comedy, principals of comedy, is permitted to collect and
10 enforce this award as is the division of human rights.

11 The second ground upon which L.I.F.T. is seeking to
12 appeal this award is the merits of the award. Now the merits
13 of the award have already passed through several layers of
14 review. The Division of Human Rights is the entity that came
15 up with this award and it rendered this award in a thirty-six
16 page decision. That decision has been provided to Your Honor
17 as well. It's also a part of Exhibit B.

18 Now on review, there's a very difficult standard that
19 would have to be met by L.I.F.T. to demonstrate that this award
20 should be vacated because this, the Appellate Court's recognize
21 that the Commissioner of the Division of Human Rights is in the
22 best position to assess the merits and the damages of this
23 case.

24 I was before that Second Department Appellate Court
25 back in 2010. They had read the, the L.I.S.T. brief and they

1 stated in the bench to both L.I.S.T. Counsel and myself that
2 they felt that this was a very strong case of discrimination
3 and retaliation.

4 I am resting my entire fee on the successfulness of my
5 obtaining the enforcement of this award on appeal. I surely
6 believe that because I'm the only secured creditor that has
7 anything to risk, I would be in the best position to make the
8 assessment as to the merits of this decision. I have the most
9 to lose if this Court were to grant today's proposal and I have
10 everything to win if this Court were to reject it.

11 I can state having been practicing in employment
12 litigation for the last approximately twenty-three years of my
13 career, and that is my sole practice, employment
14 discrimination, that I am in, perhaps, the best position as it
15 relates to the Trustee or myself as to assess the merits of
16 this case. And it is my professional opinion that the merits
17 warrant enforcement of the award.

18 If this award is allowed to be enforced, there is
19 continuing statutory interest that accrues at the rate of nine
20 percent until it's paid in full. There is a very, very slim
21 likelihood that they would ever appeal it to the higher Court
22 if they were to lose because they would have to post a bond
23 worth approximately \$700,000. Previously in papers filed with
24 this Court, they said they would never, they could not post a
25 bond as a non-profit.

1 I have also provided the Court with tax returns filed
2 by L.I.F.T. which are public because it's a non-profit
3 organization which demonstrate that it has generated income on
4 its own in the seven figures every year for the last, you know,
5 three or four years.

6 This is a viable, successful organization that fully
7 has the capability of paying this Judgement. And until it's
8 paid, the Estate is going to generate nine percent interest on
9 this Judgement. So every day, every week, every month that
10 goes by, more money comes in to the Estate which can benefit
11 the Debtor because she's going to be the one who is going to be
12 recovering after everybody else is paid.

13 Now I would like to point out that the only entity
14 that is not here are any of the unsecured creditors who, whose
15 claims only amount to \$40,000.

16 THE COURT: Which leads me to believe you're arguing
17 on behalf of your client.

18 MISS MASON: I am -- Well, actually, Your Honor, I
19 am, I think I can present an argument as why my, my position is
20 going to also benefit the unsecured creditors as well as the
21 Debtor. And the reason why I say that is as follows:

22 I have what's called a -- I have two claims, a
23 secured claim as a, as a attorney holding a statutory claim for
24 legal fees. The law is very clear that when an attorney
25 handles a case in New York, their legal fees is protected by a

1 statute. And that statute is near, Judiciary Law 475.
2 Bankruptcy Code is not permitted to compromise that statute.
3 The law is very clear and I have numerous cases demonstrating
4 that to be the case. If you would like the sites, I can give
5 them to you.

6 Because of that, that lien regarding my legal fees
7 came into effect the moment I entered the case to represent Ms.
8 Schneider back in 2000. So, therefore, right now when I filed
9 my initial lien for attorneys fees in 2008, I think it was,
10 those fees were protected and could not be compromised by the
11 Trustee because they were considered to be a --

12 THE COURT: We're not dealing with the fees now.

13 MISS MASON: Okay.

14 THE COURT: I'm trying to determine --

15 MISS MASON: Okay.

16 THE COURT: -- whether, whether I should approve this
17 proposed settlement and you're telling me that your fees are
18 protected.

19 MISS MASON: Okay.

20 THE COURT: That doesn't answer it.

21 MISS MASON: All right. I'll get to the point.

22 So if you satisfy my liens, my fees which right now,
23 and I, I understand it's to the Court's discretion to determine
24 what's a reasonable fee and what's not a reasonable fee. Right
25 now my fees are approximately \$300,000. All right. That --

1 THE COURT: I, I get it that you, you --

2 MISS MASON: So --

3 THE COURT: -- are seeking to protect your fees. Why
4 should I not approve in the bankruptcy case the proposed
5 settlement?

6 MISS MASON: Because to -- If my fees are protected,
7 you take \$300,000 off of, of what's being established today as
8 the, the proposed settlement which is \$300,000. That does not
9 address other administrator claims. It does not address the
10 Trustee's fees.

11 If you take those fees, which the Trustee did not
12 provide in his papers, we have no idea what he intends to
13 deduct from that \$300,000, in addition to which there are liens
14 that potentially also exist for Medicaid and other benefits the
15 Debtor, the Debtor has obtained.

16 That leaves nothing to satisfy the \$40,000 in
17 unsecured creditors and it leaves nothing for the Debtor
18 whereas, Your Honor, if you were to allow me to continue to
19 collect this award, which you ordered that to happen four years
20 ago pursuant to your Order to appoint me as Special Trustee to
21 the, to the Trustee, Special Counsel to the Trustee, excuse me,
22 we would potentially have a \$700,000 award. I would take my
23 portion of it. The administrator claims would be paid in full.
24 The unsecured creditors claims would be paid in full. And the
25 Debtor would, would receive the balance --

1 THE COURT: I've heard that. I, I hear you.

2 MISS MASON: Okay.

3 THE COURT: Now tell me what about the merits of the
4 objection by, on, on behalf of L.I.F.T. and Cordani.

5 MISS MASON: I would submit, Your Honor, that there
6 were, there was virtually nothing in their papers that
7 demonstrated the merits supporting the compromise of this
8 damage award. They speak about this lack of jurisdiction issue
9 which I've already demonstrated has been fully decided in the
10 Trustee's favor. That's not an issue. So that argument is off
11 the table.

12 The only other issue is whether or not the case will
13 be, the, the damage award will be upheld on appeal. And as
14 I've stated, there's every reason for me to expect that it
15 would based on the, the Court's statements to Counsel during
16 our oral argument, based on my appellate brief which I've
17 already filed previously and I've addressed all the law and I'm
18 familiar with the law.

19 So -- And then the only other issue was they said
20 collectability but I've already demonstrated that their
21 collectability argument is also vacuous because of the fact
22 that their tax returns full reflect the ability to generate
23 income and pay this award until it's satisfied.

24 THE COURT: Well, the last few years they didn't have
25 very much --

1 MISS MASON: I'm sorry, Your Honor?

2 THE COURT: In the last few years based on the tax
3 returns that were filed, there wasn't that much in income over
4 and above their expenses.

5 MISS MASON: They have, in 2011 they put --

6 THE COURT: How about 2012?

7 MISS MASON: They don't have -- They -- Those tax
8 returns have not been provided.

9 THE COURT: All right. Just 2011?

10 MISS MASON: Yes, Your Honor.

11 THE COURT: And what is that?

12 MISS MASON: And for 2011 they earned outside of fund
13 money, \$2 million in addition to which they --

14 THE COURT: Well, what was, what was left after
15 expenses?

16 MISS MASON: Well, they have on their books, they put
17 on their books this damage award so after accounting for this
18 damage award on their books, they have \$150,000 left.

19 And Judgements can be satisfied for twenty years. And
20 here we have the best security. We have nine percent interest
21 accruing. They have every incentive to pay this Judgement
22 immediately. They can take out a loan, you know, and, and pay
23 it.

24 The bottom line is, they have the means to pay it and
25 that's something that can be paid over -- The longer it takes

1 for them to pay it, the better the Debtor is.

2 THE COURT: All right.

3 MISS MASON: Thank you, Your Honor.

4 THE COURT: All right. Anyone else wish to be heard?

5 MR. PERGAMENT: Yes, Your Honor.

6 MS. SCHNEIDER: Yes.

7 MR. PERGAMENT: If I may.

8 MS. SCHNEIDER: I have --

9 THE COURT: All right.

10 MR. PERGAMENT: Your Honor, I think the Debtor wants
11 to be heard.

12 THE COURT: All right. I'll hear from the Debtor.

13 MR. PERGAMENT: Because I'm standing in support of the
14 application so let's hear the objection.

15 MS. SCHNEIDER: Hi, Your Honor. I wanted to object to
16 the, to the Trustee's motion because once my creditors are paid
17 then there won't be anything left for me and I know I made a
18 mistake and I explained to you last time about the asset
19 because I couldn't afford to have an attorney so I filed pro se
20 and I did make a mistake.

21 THE COURT: Well, when you decided to act pro se,
22 there is a question that asks whether you have any claim.

23 MS. SCHNEIDER: Well, it said do you have -- It says,
24 do you have any assets and I hadn't gone to, I hadn't won at
25 that point and when I went to college an asset to me when I

1 went for my Masters is an asset is something you hold in your
2 hand. An asset is money. And I hadn't gone to Court yet. So
3 I didn't know if I was going to win or not.

4 So that's -- And when I went to go with the pro se
5 office, they don't answer any legal questions for you. They
6 just say, you have to ask an attorney. And when you don't have
7 an attorney to ask questions for that, you get messed up like I
8 did. And I apologized a million times for this and I, I am
9 sorry. I didn't do anything to, to mess this up because I
10 really didn't want to do that. I didn't want to hide anything
11 from anybody and I said right away when they asked about the
12 bankruptcy, I told you.

13 But I, I just want the opportunity again to say I, I
14 apologize. You know, I just, I just want the opportunity to,
15 to go after my entire Judgement because I want to be able to
16 pay off my creditors, I want to pay off Elizabeth for the, you
17 know, for representing me. And I want to just start a new
18 life.

19 And I just want L.I.F.T., because L.I.F.T. and, and
20 Dick Cordani and, and Walter Mickel (phonetic), they should pay
21 what they did to me. They really ruined my life and it's
22 seventeen years, Your Honor. It, it's seventeen years and I
23 just want them to be accountable, held accountable because to
24 me this feels like, going back and forth like this, it's a joke
25 and my life is not a joke. And I just want them to be held

1 accountable because they did this to me and just because I made
2 a mistake, I don't want this to be just because I made a
3 mistake.

4 I stood up for what I did wrong and I told you what I
5 did wrong. Now it's their turn to stand up for what they did
6 wrong.

7 THE COURT: All right.

8 MR. PERGAMENT: Good morning, Your Honor.

9 On, on behalf of Long Island Forum for Technology,
10 Your Honor, I want to address several points with respect to
11 the Trustee's Motion and we also have Special Counsel who is
12 familiar with what transpired with the Appellate Division so
13 we'll have Counsel explain that to Your Honor about the merits
14 of the claim and what the Appellate Division said or did not
15 say because I believe Your Honor was given misinformation.

16 Several points, Your Honor. First of all, Ms. Mason
17 repeats something several times. The more you repeat it, it
18 doesn't make it true. She is not a secured creditor. She is
19 entitled to a third of the amount recovered.

20 Right now the recovery is zero. If the Trustee
21 recovers \$300,000, she gets a third of \$300,000. It's
22 \$100,000. She doesn't get a third of \$700,000.

23 Number two, her so called administrative claim, Judge,
24 was the manufactured administrative claim because, and Mr.
25 Blansky is much more polite and nicer than I am, we were trying

1 to settle this matter. We were extending the time to file the
2 brief in the Appellate Division. Mr. Barnard, through Counsel,
3 agreed to extend that time so that my client would not have to
4 incur the expense of doing a brief. And Miss Mason would not
5 have to spend the time doing that while we're trying to work
6 out a settlement.

7 Despite explicit direction by the Trustee, Miss Mason
8 opposed the extension of time to file the brief. I've never
9 had it. Your Honor, if I was a Trustee and a Special Counsel
10 did that to me, that Special Counsel would not have been my
11 Counsel anymore. But Mr. Barnard put it aside, let's deal with
12 the merits.

13 So she (inaudible) and did what her client told her.
14 That is her client. Miss Mason doesn't do what Ms. Schneider
15 tells her to do. She has to do what Mr. Barnard has to, tells
16 her to do.

17 Number two, Your Honor -- So there's \$70,000 in
18 expenses. Your Honor, I believe it's just make believe.
19 Okay. But that will be dealt with by Your Honor down the road.

20 If the award of -- If the settlement of \$300,000 is
21 approved, Miss Mason will get \$100,000. The Trustee would get
22 his commissions on \$300,000 which Your Honor is aware is
23 approximately \$17,000. Mr. Lamonica's firm, Lamonica and
24 Maniscalco, will get its legal fees subject to, of course, a
25 hearing before Your Honor. And the unsecured creditors get

1 paid in full and the money left over, which will be
2 substantial, goes to Ms. Schneider.

3 So Ms. Schneider does get a fresh start even though
4 she did not answer Your Honor's question. The bankruptcy form
5 says, do you have any claimed or law suits that you could
6 pursue? It doesn't say, give me the assets. It says, do you
7 have any claims or law suits.

8 And Your Honor was fully aware of what that
9 (inaudible). She purposely said no. and what happened was
10 when she was going to lose the case, she came to Court and
11 said, oh, I forgot, I forgot to list this law suit. So she
12 knew what she was doing then. She got caught and said, oh, my
13 mistake. And then she did answer Your Honor's question as to
14 why she didn't list the asset because it's not an asset, it's
15 within the sub-category of claims and that's what the form is.

16 And Your Honor who conducted more 341 meetings than I
17 would want to count, one of the questions Your Honor asks is,
18 do you have any claims or law suits that you could pursue or
19 the trustee could pursue on your behalf? That is a standard
20 question at 341 meetings Your Honor conducted years ago that
21 Mr. Barnard still conducts today. And the answer of the Debtor
22 was no.

23 So she misrepresented at 341 meeting and continued
24 that misrepresentation.

25 With respect to Miss Mason's argument that there's all

1 this revenue that you can collect this Judgement, first of all,
2 Your Honor, she's mistaken. You could appeal to the Court of
3 Appeals without filing a bond. The Judgement could be enforced
4 unless the Court of Appeals says it should be stayed.

5 Number two, as Your Honor zeroed in correctly, there
6 is minimal available assets of Long Island Forum and
7 Technology. It is a non-for-profit. Its assets are
8 effectively its equipment and its revenue is either donations
9 or grants that come from government agencies that are what we
10 call restricted grants. What does that mean? That means the
11 funds have to be used to specified purposes. It cannot be used
12 for certain expenses. It cannot be used for liabilities.

13 So at the end of the day even if Your Honor did not
14 approve the settlement and even if the Appellate Division
15 affirms the award of the administrative agency, it's not a
16 trial, it's an administrative agency, and the Court of Appeals
17 does not reverse, the Trustee then tries to pursue this
18 Judgement.

19 Well, Long Island Forum of Technology has about
20 \$75,000 in its bank account. That's not going to pay a
21 \$700,000 award. So at the end of the day who gets hurt here is
22 actually your creditors. They get nothing because that money
23 gets gobbled up in Miss Mason's fees.

24 And, as Your Honor is aware, it is hard to predict as
25 a Trustee what an Appellate Court will do especially we're

1 talking about a trial before the State Supreme Court. There
2 was an administrative hearing that went on for years, years and
3 Counsel will explain to Your Honor a lot of the problems with
4 that administrative hearing. It's not as though my client
5 wanted to settle for \$300,000.

6 We considered the risk. Mr. Barnard considered the
7 risk. And we weighed the risk of a reversal by the Appellate
8 Division versus a risk of course of an affirmance and had
9 considered collectability. We provided Mr. Barnard what
10 financially he requested in addition to the public documents
11 that he had. He reviewed that with his Counsel, very expert
12 Counsel, Your Honor, we're not talking about Trustee's Counsel
13 who are inexperienced in these kind of matters, Your Honor, and
14 we negotiated hard.

15 We did not offer \$300,000 in the beginning. We went
16 back and forth, Your Honor, and we ultimately agreed on that
17 amount and because of my client's financial position, we need
18 several years to pay it back. That tells you that my client is
19 not awash with cash. Gross revenues is not money in the bank.
20 That just means the money comes in and has to pay expenses,
21 payroll, rent, etcetera and I think Your Honor recognized that
22 and Miss Mason really did not answer Your Honor's question
23 because the tax returns show the amount in the bank for all the
24 years, if you go back all these years, there's less than
25 \$100,000 a year.

1 This is basically a not-for-profit that brings in
2 money, pays the expenses, serves the public and that's what it
3 does. It doesn't reward anybody else. There's no dividends.
4 That's why it's a not-for-profit.

5 And I think Your Honor, based on the facts before Your
6 Honor and the facts that Miss Mason just, really is just making
7 up arguments, there is no real objection of any merit to the
8 Trustee's application. And I believe Your Honor should grant
9 the application and approve the settlement.

10 THE COURT: All right. Anyone else wish to be heard?

11 MR. WENGER I would like to be heard if I may, Your
12 Honor.

13 THE COURT: Yes. Identify yourself and tell me who
14 you represent.

15 MR. WENGER My name is Mark Wenger. I'm with the law
16 firm Jackson Lewis PC and I represent the Long Island Forum for
17 Technology and I rise in support of the proposed settlement.

18 There have been some comments in this proceeding with
19 respect to the merits of the underlying claim and the appeal
20 proceedings. I am the attorney representing L.I.F.T., and Mr.
21 Cordani as well, the individual Defendant who has been dragged
22 through this process for these many years, and I am in a
23 position to comment on the status of those proceedings, how
24 they've come to this point and where they're likely to go.

25 There have been some representations about what's

1 happened previously and what the Appellate Division panel
2 apparently commented on about the merits of the claim. I am
3 here to tell you what was said. It was definitely not what the
4 Appellate Division said about the case.

5 They made a determination on our initial appeal from
6 the award of the State Division of Human Rights that the
7 individual Debtor did not have the capacity to pursue that
8 claim. That is the only issue that they decided. They did not
9 opine on the merits of the claim. They remanded the matter to
10 the Division of Human Rights for substitution of the Trustee.
11 The Division of Human Rights then confirmed the original award
12 and we've now taken an appeal on numerous grounds, many of
13 which we asserted in our original appeal.

14 But there is, there are a slew of issues any one of
15 which could render the State Divisions award annulity and there
16 is a, in my opinion, and I've been litigating employment
17 discrimination cases for twenty-six years to the extent that
18 that's relevant, there is a substantial likelihood that the
19 award is either vacated or that it is reduced, possibly as much
20 as by half.

21 Even if the Debtor wins on the merits of the award,
22 she may recover something less than \$400,000 and I would be
23 happy to explain how that could happen.

24 THE COURT: Yeah. Why don't you do that.

25 MR. WENGER Sure. There are a number of elements of

1 damages in this award. Primarily among them are back pay. The
2 Debtor was an employee of L.I.F.T., she claimed that she was
3 subjected to sexual harassment, that she complained and that at
4 some point she was terminated and that was in retaliation for
5 her complaints.

6 But one of the elements of damages that she's claiming
7 and that the Division of Human Rights awarded her was back pay.
8 It is our contention that the back pay award is, even if you
9 were, even you sustain the merits, and I certainly disagree
10 with that and I think the standard of review on appeal has been
11 mischaracterized and that there is a, the Division of Human
12 Rights awards are reversed on appeal all the time and this is a
13 prime candidate for it, but leave aside the merits of the
14 sexual harassment and retaliation claim.

15 Back pay award, she was, she was employed I think up
16 until 1996 or 1997. She's, yeah, claiming back pay for several
17 years and then nine percent interest on top of that. She has
18 an obligation to mitigate her damages. The record is replete
19 with evidence that she failed to meet her obligation to
20 mitigate her damages. The Division of Human Rights made no
21 comment on that issue. We believe that on, on appeal the
22 Appellate Division will examine that issue and they may well
23 conclude that if she's entitled to any back pay, it will be for
24 a brief period of time until she failed to meet her mitigation
25 obligations.

1 We also believe that the interest calculations are
2 wildly overstated. They've ran -- The, the Division of Human
3 Rights is running interest from 2000. A hearing was not
4 commenced in this proceeding until 2004. Now that's almost
5 eight years after the, the Debtor was terminated. We believe
6 that the Division of Human Rights delay should not be assessed
7 against L.I.F.T. Nine percent interest shouldn't run during
8 that time. It was not through any fault of L.I.F.T. that the
9 proceeding was delayed for that length of time.

10 And then on top of that, the Debtor ignores her
11 obligations to schedule this administrative claim as an asset
12 causing further delay and apparently now benefiting from the
13 nine percent interest that runs during that delay. We believe
14 that all of those issues will be addressed by the Appellate
15 Division and when they do, that they will substantially reduce
16 the award.

17 There are other elements of damages as well.
18 Compensatory damages for example, basically emotional distress
19 damages. There was no medical evidence produced during this
20 hearing regarding her emotional distress and yet the Division
21 of Human Rights awarded \$75,000 for emotional distress. We
22 believe the case law is clear that that's an excessive award.
23 Interest should not run on top of that award in any event. But
24 that amount should be reduced substantially.

25 There are, there are other issues I think that we've

1 raised with respect to the appeal and the calculation of
2 damages.

3 All-in-all I think if she wins, there is a
4 considerable likelihood if she wins on the merits that she
5 walks away with less than \$400,000.

6 Now, as to the merits, we also believe that since her
7 claims are two-fold, harassment and then retaliation.

8 The harassment claim doesn't justify back pay. One
9 doesn't get back pay simply because one was exposed to severe,
10 pervasive and offensive conduct. She has to establish some
11 direct damage. That's the emotional distress award.

12 The retaliation claim we believe is particularly
13 susceptible to being reversed on appeal because the evidence on
14 the complaints was remote in time from her actual termination.
15 The individual to whom the complaints were made was not a
16 decision maker. These issues could result in the, the
17 Appellate Division concluding that while there may have been
18 harassment, that is an issue for the Division and they might
19 defer to the Division's discretion on that.

20 As a matter of law, a complaint that's remote in time
21 to the adverse action, the termination decision, is not
22 retaliation. There's no tempo of proximity. That is an issue
23 the Appellate Division will have to address. If they conclude
24 that the retaliation claim is legally invalid, there's no back
25 pay award whatsoever and that, that, that makes an enormous

1 difference in the total amount of the award.

2 So for all of those reasons we think that there is,
3 there is a chance that the appeal will be successful and that
4 L.I.F.T. will be exonerated and Mr. Cordani will be exonerated.
5 And that even if not, that the award will be substantially less
6 than what the Claimant is, is seeking.

7 And for those reasons we feel that a \$300,000
8 settlement is more than sufficient to address any viable claims
9 that she might have and it's a reasonable settlement under the
10 circumstances.

11 THE COURT: All right. Anyone else wish to be heard?
12 All right.

13 MISS MASON: Your Honor, the law is very clear. I am
14 a secured creditor. The Trustee has previously recognized it
15 as such and I can provide fifteen cases that state that I am.

16 THE COURT: We're not here to discuss your fees.

17 MISS MASON: Okay. I just want to address that point.
18 I, I, I understand that.

19 The second point is that in terms of the merits of
20 this case, I have provided Your Honor with a copy of that
21 decision that Your Honor previously read and reviewed as did
22 the U.S. Trustee and found that it was a very strong case as
23 you perceived it and as the U.S. Trustees perceived it and as I
24 have perceived it and the head of the Division of Human Rights
25 has perceived it.

1 My client was sexually harassed by a co-worker and she
2 complained not once, not twice --

3 THE COURT: Well, how, how about some of the issues
4 now being raised that would come up before the Division should
5 it have to have a hearing?

6 MISS MASON: I'm, I'm -- Those issues being that
7 there are no merits to their appeal. I have already drafted
8 the reply brief. I have already pulled the law. I have every
9 single point that they raised, I have law showing there's no
10 basis for it. Statutory fees for instance, okay, statutory
11 interest, there is Court of Appeal law that says it was an
12 abuse of discretion not to award statutory interest. There's
13 not a single case on the books that supports vacating
14 statutory interest. Not a single one that would, that in this
15 situation would ever be --

16 THE COURT: How about mitigation?

17 MISS MASON: I'm glad you brought up that up, Your
18 Honor, because on Page 20 of the Division's decision, which is
19 Exhibit B, the Division fully addresses her mitigation efforts.
20 In fact, she mitigated more than \$200,000 worth of salary in
21 her mitigation efforts. She was constantly e-mailing, reading
22 the paper, contacting friends. On three separate occasions
23 because of her mitigation efforts she got jobs, temporary jobs,
24 jobs through colleagues of hers, through friends, through the
25 State. So she mitigated and the law is very clear that unless

1 you --

2 THE COURT: Has there been a determination as to that
3 issue?

4 MISS MASON: By the Division of Human Rights there has
5 been that she mitigated. And the law is clear, that unless
6 you, if you remove yourself from the job market, which she did
7 not do, okay, if you reject a job offer, which she did not do,
8 and, and if you take a different position outside of your area
9 of expertise, which she did not do, those are where you show
10 failure to mitigate. So the --

11 If you look at Page 20 through 24 and then even
12 further in terms of the law, it's very clear that she
13 mitigated. And she mitigated so well that she reduced her back
14 pay damages by more than \$200,000.

15 I'm the attorney who was present at the hearing and I
16 handled this hearing. Counsel was not there. Former Counsel
17 for L.I.F.T. was discharged and this Counsel came in long after
18 the hearing was over. So I'm the attorney who knows the
19 evidence that was presented in favor of the Plaintiff showing
20 sexual harassment, showing retaliation.

21 THE COURT: I'm sure there is a record that --

22 MISS MASON: There is and it, it's this long and it's
23 before the Appellate Court.

24 And, furthermore, I would like to point out that if
25 L.I.F.T. is so certain that it's going to receive zero, you

1 know, as a, as a Judgement, then L.I.F.T. should be all for our
2 going back to the Appellate Court on appeal because frankly
3 L.I.F.T. does have everything to lose. It's going to. It's
4 looking at a \$700,000 judgement against it. That's why
5 L.I.F.T. wants to compromise this claim for less than half of
6 its value.

7 And I need just to emphasize, Your Honor, the two most
8 important entities that are relevant to this Court's decision,
9 i.e. the interest of the, the, the creditors and the debtor are
10 vehemently opposed to this compromise.

11 THE COURT: All right. I hear that. Thank you.

12 MISS MASON: Thank you, Your Honor.

13 THE COURT: Where is the Trustee? Did you want to
14 respond to her?

15 MR. WENGER I would like to address some of these
16 comments --

17 THE COURT: Yes.

18 MR. WENGER -- if I may briefly, Your Honor.

19 THE COURT: Go ahead.

20 MR. WENGER There is a record. We've examined the
21 record very closely and we've made that the basis for our
22 appeal.

23 On the issue of mitigation for example, if she's
24 mitigated her damages, she should not continue to receive a
25 back pay award and yet the Division of Human Rights, contrary

1 to the evidence in the record we believe, allowed her back pay
2 award to continue to run after she obtained what was described
3 as temporary employment. She has some self-employment, she
4 received some income, she had project based employment, she had
5 temporary employment. She had lengthy periods of unemployment
6 during which she was making no efforts to find other work. And
7 throughout that entire period of time, for almost eight and a
8 half years, the Division of Human Rights continued to run the
9 clock on her back pay award.

10 It's our view that the case law is clear. That record
11 will not justify a back pay award.

12 We also believe on the issue of statutory interest,
13 for example, we're not contesting the issue of applying
14 interest to an Order. That goes without saying. What we're
15 contesting on the appeal and what we believe we have good
16 grounds to reverse is the date of approval. The date of
17 approval selected by the Division of Human Rights is some time
18 in 2000 and because of the delay of the Division of Human
19 Rights and frankly the delay caused by the Debtor's failure to
20 list the asset on her schedule, L.I.F.T. should not be assessed
21 nine percent interest during that entire time period. There is
22 ample case law on that issue.

23 So I think that that warrants the Court's
24 consideration and the -- I stand by my representation that the
25 award, even if they're successful on the merits, would be

1 substantially reduced from what it is.

2 Thank you.

3 THE COURT: All right. I'll hear from the Trustee.

4 MR. BARNARD: Your Honor --

5 THE COURT: Identify yourself.

6 MR. BARNARD: Yes. R. Kenneth Barnard, Chapter 7
7 Trustee.

8 Your Honor, this is a ten year old case. At some
9 point this needs to come to a conclusion. We, we are looking
10 at a situation where we have a substantial offer. We have a
11 Defendant represented well by Counsel who has presented a
12 variety of very good defenses with respect to the merits of the
13 claim.

14 We have a situation where we, where our ultimate
15 reward may be no better than the settlement being offered at
16 the moment.

17 We have a situation where we certainly could lose on
18 appeal and end up with nothing after ten years.

19 From the fiduciary standpoint as to the creditors,
20 it's one hundred percent recovery so shall I turn that down and
21 roll the dice instead on the possibility of, of a, a better
22 recovery that increases the surplus?

23 In terms of how the money is ultimately divided, Your
24 Honor has control over that. Your Honor has control over what
25 fees are going to be awarded here and how the money is

1 ultimately going to be divided and it appears to me from, from
2 the, from the numbers that there will be a substantial surplus
3 to the Debtor here and that's a good thing, I think.

4 We have, as Mr., Mr. Pergament said before, negotiated
5 hard. They didn't volunteer \$300,000, Your Honor. Your Honor,
6 these -- After substantial negotiations we have gotten to what
7 appears to me to be a very reasonable number under the
8 circumstances and in the face of this litigation. And as I see
9 the litigation, this could go on many, many more years. We --
10 The appeal hasn't been argued yet. It could be remanded for
11 further hearings. We could find ourselves standing here three,
12 four years from now once again.

13 So, again, given a reasonable recovery, a reasonable
14 surplus to the Debtor, she will get her opportunity for a fresh
15 start. Her, her creditors will be paid. She will leave here
16 with some surplus money. She gets her fresh start. It seems
17 to me that that's the best outcome that could be achieved under
18 the circumstances and, again, Your Honor, we've given this
19 substantial time.

20 We were here five years ago. Shall we come back in
21 another five years? It, it -- We reach a point, Your Honor,
22 where the distribution to creditors will, will be meaningless
23 and will be so far from the event.

24 So at this point I recommend that the Court accept the
25 settlement.

1 THE COURT: I, I take it that's your genuine business
2 decision?

3 MR. BARNARD: Yes, Your Honor. Yes, Your Honor.
4 Given the defenses that are being presented, the posture of the
5 case, the potential recovery to the unsecured creditors and the
6 potential realitible surplus to the Debtor, I think it is a
7 reasonable business decision to recommend that the settlement
8 go forward.

9 THE COURT: All right. Is, is this timely? In other
10 words, is there still an opportunity to oppose it in the State,
11 in the Appellate Division?

12 MR. BARNARD: Yes. My understanding is that the
13 Defendant has filed their brief and that if it is not approved
14 today, what will happen next is brief will be submitted on
15 behalf of the Plaintiff, the appeal will be argued and then
16 whatever will flow from that.

17 THE COURT: So it's timely. It's not --

18 MR. BARNARD: Correct.

19 THE COURT: It's not out of time.

20 MR. BARNARD: Correct.

21 THE COURT: And one more question to you, Sir.

22 MR. BARNARD: Yes.

23 THE COURT: I notice in your papers that you have
24 indicated that at most the recovery would be approximately
25 \$493,000 or \$500,000.

1 MR. BARNARD: We, we had a different calculation with
2 respect to the interest than they, than they did. We -- I, I
3 -- You know, we've read the papers and it's just a difference
4 of opinion. And Mr. Blansky can explain the calculation much
5 clearer than I.

6 THE COURT: Well, I would like to know what you think
7 the ultimate, at best what it might be. Does anyone have that
8 --

9 MR. BARNARD: The best case scenario.

10 THE COURT: The best case scenario so I'll know what
11 the settlement is against what is possible.

12 MR. BLANSKY: Your Honor, I believe we, that
13 calculation came from using the final Order --

14 THE COURT: Yes.

15 MR. BLANSKY: -- from April of '07 and then we did the
16 calculation using the nine percent from that date forward and
17 that's how we got the, got the number as to the date of the
18 papers.

19 THE COURT: All right.

20 MR. BLANSKY: As close to I think the, the 2000 or
21 2004 calculation that I think you've heard discussed or put
22 into various calculations. That why we have a smaller --

23 THE COURT: Well, is there any, is there any support
24 for a \$700,000 claim?

25 MR. BARNARD: Your Honor, I've heard the defenses that

1 are presented. It seems to me they, you know, the defenses
2 have merit in that respect. The \$700,000 number doesn't seem
3 like a true number to me from my reading, in my, in my opinion
4 from my reading of the documents.

5 THE COURT: All right. All right.

6 MR. PERGAMENT: Your Honor, if I may just --

7 THE COURT: Yes.

8 MR. PERGAMENT: I'm sorry, Your Honor. I just want to
9 clarify two points.

10 Number one, Your Honor, with respect to the Appellate
11 Division, you asked about timeliness.

12 THE COURT: Right.

13 MR. PERGAMENT: Just so Your Honor is aware of the, of
14 the process in the Appellate Division, once the appeal is fully
15 briefed it then is about six or eight months from now will be
16 placed on the Appellate Division calendar. The Appellate
17 Division right now in the Second Department is rendering
18 decisions twelve to eighteen months from whence on its calendar
19 which means we're talking about roughly two years from now and
20 that's assuming, Your Honor, that, of course, there's not a
21 reversal or a remand.

22 Number two, Your Honor, an issue that Mr. Barnard
23 eluded to but be clear, the other factor here in the settlement
24 was not just we believe \$700,000 is out of whack because the
25 issue of collectability which Mr. Blansky and I and Mr. Herbst

1 and I and, of course, with the Trustee spent a lot of time,
2 Your Honor, where they had to make a judgement, the judgement
3 that I had made, that collectability is really an issue here.

4 And here we are insuring that the creditors get one
5 hundred cents on a dollar. Your Honor, that is an important
6 consideration. When you act as Trustee you always run the risk
7 of collectability when you're in any lawsuit. And here
8 especially in talking about deminimous which, obviously, is not
9 an entity that has a lot of hard assets for the benefit of
10 creditors. And thus the settlement I believe is in the
11 interest of the Estate which would be the unsecured creditors
12 and, of course, that's the business judgement to Mr. Barnard
13 who is a very experienced Trustee and represented by very
14 experienced bankruptcy and Trustee Counsel.

15 And I ask Your Honor to grant the motion in its
16 entirety.

17 THE COURT: All right. Did you have something you
18 wanted to --

19 MISS MASON: In response, Your Honor.

20 THE COURT: Yes.

21 MISS MASON: Thank you. I think it's noteworthy to
22 the Court to see exactly the basis upon which the Trustee is
23 asking the Court to compromise a damage award by more than
24 \$400,000 worth of that award.

25 The Trustee has not provided any statement regarding

1 the accrued interest in its papers.

2 I have provided detailed calculations and they're very
3 simple and I provided that to Your Honor as Exhibit A. The
4 Trustee has not demonstrate that Exhibit A's numbers are
5 incorrect.

6 THE COURT: Well, would it matter if it were \$1
7 million but it was attempted to be settled and the settlement
8 might be in the best interest of creditors?

9 MISS MASON: The settlement is not in the best
10 interest certainly of me because you're compromising my claim
11 from \$300,000 to \$100,000. So I would be losing over
12 two-thirds of my legal fees. So I would be seriously damaged
13 by this compromise. And I as the State's largest secured
14 creditor have the largest interest here at stake in addition to
15 which I submitted to Your Honor forty-nine points demonstrating
16 that this compromise fails to satisfy the Supreme Court and the
17 Second Circuit Court's test as to whether it's reasonable or
18 not. I itemized each of these seven points in my objections
19 and I would ask Your Honor to review my objections to see that
20 there is no reasonableness to this proposed offer.

21 The, the Trustee has failed to satisfy his burden. It
22 was his burden to demonstrate that it's fair and reasonable and
23 in the best interest of the creditors. And I, as the creditor,
24 say it's not in my best interest.

25 The Debtor has said it's not in her best interest.

1 So because of what's been submitted and argued,
2 there's no basis to conclude that it's in the best interest of
3 this Estate.

4 THE COURT: Thank you. Mr. DiMino, did you wish to be
5 heard?

6 MR. DiMINO: Thank you, Judge. Alfred DiMino for the
7 Office of the United States Trustee.

8 As the Court recalled, we were here once before on a
9 potential settlement of about half the amount that's being
10 offered today. At that time in that status of the case back
11 then was the pending determination of whether or not the Debtor
12 would even be able to continue with his claim because it hadn't
13 been listed as an asset on her bankruptcy case.

14 And obviously since then the decision has been made
15 that the Trustee could be substituted in and, and, and go
16 forward. And there was a determination in terms of the
17 underlying causes of action.

18 But the case remains in flux. There is still an
19 appeal. The appeal now is rather than from the procedural
20 aspect of whether or not the case should be dismissed because
21 of an improper Plaintiff. We now have the merits going up on
22 appeal and that has not been determined.

23 The, the two issues that I, that I see, and I do
24 appreciate Counsel's arguments because there are some economics
25 involved for everyone that would be somewhat compromised by the

1 approval of, of the settlement.

2 But the two things that exist today that are at least
3 to some extent more clear is that the Court has to determine
4 whether or not, one, the amount is reasonable given the overall
5 claims, whether or not the Trustee is exercising his business
6 judgement appropriately.

7 And, and the two major issues are, one, there is risk
8 inherent with any appeal. There's a risk of a loss by the, by
9 the, the party in terms of, of the party who obtained the
10 Judgement is a risk that that Judgement could be overturned.
11 There's a risk that that Judgement could be reduced.

12 Secondly, there's a risk of collectability. I have no
13 reason to doubt the Trustees conclusion that collectability may
14 have some issues. I won't say I know all of the financial
15 circumstances of the Defendants but there is a concern and the
16 Trustee has to take that into consideration when determining
17 whether or not a settlement is reasonable.

18 So at, at this point it appears that the Court could
19 find that the Trustee is exercising his, his judgement
20 appropriately based upon those two issues.

21 It would be, it would be obviously preferable to
22 everyone if the entire amount was sustained, that, that
23 everybody gets paid, everybody goes home, everybody gets their
24 money but that may not be the case.

25 So at this point, and I'll, and I'll just take this in

1 terms of the, of, of the bankruptcy case itself, the Trustee's
2 obligation is to maximize the benefit, maximize the recovery
3 for the benefit of creditors. In this case we have a \$40,000,
4 approximately \$40,000 unsecured creditor pool. Based upon my
5 understanding if the Court was to approve the \$300,000
6 settlement, that those creditors would be paid one hundred
7 cents on the dollar. That is what the Trustee is here seeking
8 to protect.

9 The only other alternative would be for someone, and,
10 and we discussed this numerous years ago, of coming in and
11 saying, I'll pay them, let me go forward, then there's no risk
12 to the creditors. That hasn't taken place nor it appears could
13 take place.

14 So the Court is left in the inevitable position to, in
15 essence, determine whether or not the settlement which would,
16 assuming that the Plaintiff was fully successful under all of
17 the theories, receive a much reduced surplus from the Estate.
18 It appears at this point, at least from, from my consideration,
19 that the risk of appeal and the risk of collectability are
20 sufficient to get the Trustee over the hurdle in terms of
21 business Judgement in, in accepting the settlement.

22 THE COURT: All right.

23 MR. DiMINO: Thank you, Judge.

24 THE COURT: All right. I'll hear you.

25 MISS MASON: Thank you, Your Honor.

1 I, I listened very carefully to the Trustee's
2 statements and I would like to address those statements for
3 Your Honor.

4 In the first instance in terms of the merits of the
5 appeal, the Trustee and L.I.S.T. Counsel had every opportunity
6 to present this Court with law to support their position. They
7 have not. And the reason they have not is because I have
8 plenty of law to demonstrate that this case will win on appeal.
9 All right. There's not a single fact that they can point to
10 that demonstrates that this case has any weakness.

11 So in terms of the merits on the appeal, we are at the
12 tail end of the process. I'm going to be submitting my brief,
13 which I have already written, in five days. This is --

14 THE COURT: You're, you're, you're telling the Court
15 that there is no risk.

16 MISS MASON: I am telling the Court that the risk is
17 deminimous compared to the gain. I have a huge amount of
18 attorney's fees that is being potentially compromised,
19 seriously compromised and I'm the one who is saying, I'm the
20 one who is saying I'm willing to take that risk.

21 The, the Trustee is supposed to be looking out for my
22 interests and he's not. And he's supposed to be looking out
23 for, you know, the interests of the Debtor and he's not.

24 So in terms of that, if I'm the one who is willing to
25 say, I'm willing to take that risk and I'm the one who has the

1 most knowledge, personal knowledge as to the merits of that
2 risk because Your Honor appointed me as the person to be
3 responsible for that, as being the expert in that, it should
4 be, it should fall on my shoulders to be able to say I reject
5 this, it's not fair.

6 And as far as collectability, we're not dealing with
7 an organization that is going to be looking at bankruptcy nor
8 can this organization discharge this debt in bankruptcy because
9 it's protected from being discharged.

10 THE COURT: That doesn't apply here. It's only --
11 The reference you're making applies to a Debtor, not to a
12 creditor or a Judgment creditor.

13 MISS MASON: The, the reason why I make that point is
14 because they have said, oh, well, if we're found guilty, we'll
15 file for, for bankruptcy.

16 Okay. So suffice it to say they have made \$2 million
17 last year and the year --

18 THE COURT: And how much did they expend?

19 MISS MASON: After putting, after taking care of this
20 award, after putting it on their books, they had money left
21 over. They have scheduled this debt on their books.

22 THE COURT: Thank you.

23 MISS MASON: So it's taking into account --

24 THE COURT: Is there anything else?

25 MISS MASON: No, Your Honor.

1 THE COURT: All right. Last call. Anyone have
2 anything they want to add? All right.

3 It's unfortunate that the claim here is really being
4 raised on behalf of the Debtor and it's Counsel.

5 However, what is before the Court is only a
6 determination to be made as to whether this at the lowest level
7 of reasonableness in the compromise.

8 It's the same standard I used before when I didn't
9 think it was appropriate. But in this case I, I do.

10 I believe that there is an inherent risk in the
11 appeal. There is a risk that there will be very little to
12 compensate the Trustee in this case on behalf of the Debtor.
13 There is substantial delay ahead which diminishes any recovery
14 to anyone until it is ultimately decided. There is no evidence
15 that it is fully collectible if it were to be obtained.

16 And most important I have to give credit to a
17 Trustee's business judgement after reviewing all of the issues
18 placed before him and therefore I must determine that the
19 Trustee's motion to be granted. Settle an Order.

20 MR. PERGAMENT: Thank you, Your Honor.

21 MS. SCHNEIDER: For \$40,000?

22 THE COURT: It's \$300,000.

23 MS. SCHNEIDER: (Crying). You -- I can't believe it.
24 You (inaudible). I hope you're happy. You are unfair. You
25 came after.

1 THE COURT: I'll take a five minute break and then
2 I'll resume the calendar.

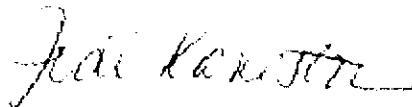
3 MS. SCHNEIDER: Seventeen years.

4 (Whereupon these proceedings were concluded at 11:30 a.m.)

5 [11:30:41]
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C E R T I F I C A T I O N

I, Jodi Kanestrin, certify that the foregoing transcript is a true and accurate record of the proceedings.



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